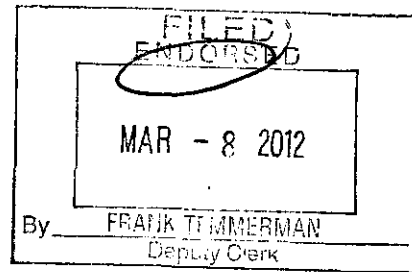


1 KAMALA D. HARRIS
Attorney General of California
2 CONSTANCE L. LELouis
Supervising Deputy Attorney General
3 ANTHONY R. HAKL
Deputy Attorney General
4 State Bar No. 197335
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-9041
Fax: (916) 324-8835
7 E-mail: Anthony.Hakl@doj.ca.gov
*Attorneys for Respondent Secretary of State Debra
8 Bowen, and Real Parties in Interest Attorney
General Kamala D. Harris and Acting State Printer
9 Kevin Hannah*



10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SACRAMENTO
12

13 **TERESA CASAZZA,**

Petitioner,

15 v.

16 **DEBRA BOWEN, in her official capacity of**
17 **Secretary of State of California,**

18 Respondent,

19 **KAMALA HARRIS, in her official capacity**
20 **as Attorney General of California; KEVIN**
21 **HANNAH, in his official capacity as Acting**
22 **State Printer for the State of California; and**
23 **DOES I through X, inclusive,**

24 Real Parties in Interest.
25
26
27
28

Case No. 34-2012-80001078

**~~PROPOSED~~ ORDER AND JUDGMENT
AFTER HEARING ON PETITION FOR
PEREMPTORY WRIT OF MANDATE**

**ELECTION MATTER:
PROPOSITION 29**

Date: March 8, 2012
Time: 10:30 a.m.
Dept.: 29
Judge: Hon. Timothy M. Frawley
Trial Date: March 8, 2012
Action Filed: March 1, 2012

1 The petition for peremptory writ of mandate by Teresa Casazza came on for hearing in
2 Department 29 of this Court on March 8, 2012. Anthony R. Hakl, Deputy Attorney General,
3 appeared on behalf of Respondent Secretary of State Debra Bowen, and Real Parties in Interest
4 Attorney General Kamala D. Harris and Acting State Printer Kevin Hannah.

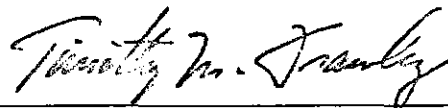
5 James R. Parrinello appeared on behalf of Petitioner Teresa Casazza.

6 Deborah B. Caplan appeared on behalf of Intervenor Yes on 29 - Californians for a Cure,
7 Sponsored by the American Cancer Society California Division, Inc., American Lung Association
8 in California, American Heart Association and Cancer Research Doctors.

9 Having read and considered the memoranda of points and authorities filed by the parties,
10 and having heard argument of counsel, IT IS HEREBY ORDERED AND ADJUDGED THAT:

11 The Petition for Peremptory Writ of Mandate is granted in part and denied in part. As
12 reflected in the attached tentative ruling, which the Court hereby adopts, the Secretary of State
13 shall implement changes to the Argument Against Proposition 29, Rebuttal to Argument in Favor
14 of Proposition 29, and the 50-word ballot measure summary for the argument against Proposition
15 29 to insert the updated figures as set forth in the tentative ruling and as provided by the
16 Legislative Analyst in the February 2012 Fiscal Impact Statement and make the revised
17 arguments and 50-word summary available for public examination throughout the remainder of
18 the 20-day public display period that began February 21, 2012, and is set to end March 12, 2012.
19 Thereafter, if no court-ordered changes are made to the revised arguments and 50-word summary,
20 the Secretary of State is directed to forward the revised arguments and 50-word summary, and
21 their translations, to Real Party in Interest Kevin Hannah and county elections officials, for
22 inclusion in the June 5, 2012 Presidential Primary Election ballot pamphlet.

23
24 Dated: MAR - 8 2012



25 Honorable Timothy M. Frawley
26 Superior Court of California, County of Sacramento

1 APPROVED AS TO FORM:

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3 
4 James R. Barrinello, counsel for Petitioner

5
6
7
8 Deborah B. Caplan, counsel for Intervenor

9 Dated: March 8, 2012

Respectfully Submitted,

10 KAMALA D. HARRIS
11 Attorney General of California
12 CONSTANCE L. LeLOUIS
13 Supervising Deputy Attorney General

14
15 ANTHONY R. HAKL
16 Deputy Attorney General
17 Attorneys for Respondent Secretary of
18 State Debra Bowen, and Real Parties in
19 Interest Attorney General Kamala D.
20 Harris and Acting State Printer Kevin
21 Hannah

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1 APPROVED AS TO FORM:
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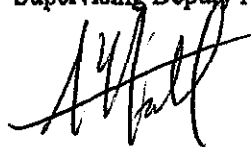
4 James R. Parrinello, counsel for Petitioner
5

6
7 Deborah B. Caplan
8 Deborah B. Caplan, counsel for Intervenor

9 Dated: March 7, 2012
10 8

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
CONSTANCE L. LELouis
Supervising Deputy Attorney General



ANTHONY R. HAKL
Deputy Attorney General
Attorneys for Respondent Secretary of
State Debra Bowen, and Real Parties in
Interest Attorney General Kamala D.
Harris and Acting State Printer Kevin
Hannah

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**Department 29
Superior Court of California
County of Sacramento
720 Ninth Street
Timothy M. Frawley, Judge
Frank Temmerman, Clerk**

Thursday, March 8, 2012, 10:30 a.m.

TERESA CASAZZA	Case Number: 34-2012-80001078
v.	
DEBRA BOWEN, in her official capacity as Secretary of State of California	
<hr/>	
KAMALA HARRIS, et al.	

Proceedings: Petition for Writ of Mandate (Election Matter)

The following shall constitute the court's tentative ruling on the above-entitled matter.

Introduction

Proposition 29 is a proposed statutory initiative measure which will be on the June 5, 2012 statewide election ballot. It will impose additional taxes on cigarettes and other tobacco products to fund cancer research and tobacco use prevention programs.

Petitioner Teresa Casazza, is a registered California voter and taxpayer and the President of the California Taxpayers Association (CalTax). As the President of CalTax, Petitioner is an author of the Argument against Proposition 29.

Petitioner brings this petition to challenge the Attorney General's proposed ballot label for Proposition 29. Petitioner contends that the Attorney General's proposed ballot label is inconsistent with statutory requirements because it is not a "condensed version" of the ballot title and summary. Petitioner specifically takes issue with the fact that the ballot label does not inform voters that Proposition 29 would create a new 9-member committee to administer the special fund created by the measure. According to Petitioner, because the committee was included in the title and summary, it should also be included in

the ballot label. Petitioner seeks a writ of mandate compelling Respondent Secretary of State to amend the ballot label to include a statement that the measure would create a 9-member committee charged with administering the Proposition 29 funds.

Petitioner also seeks to amend the "No on 29" Argument and Rebuttal and the 50-Word Summary against Proposition 29 to insert updated figures provided by the Legislative Analyst's most recent fiscal analysis of Proposition 29. Petitioner contends that the Argument, Rebuttal, and 50-Word Summary include figures derived from the Legislative Analyst's initial fiscal impact analysis dated January 15, 2010. After they were submitted, the Legislative Analyst released a new fiscal impact analysis containing updated figures. To avoid possible voter confusion, Petitioner requests that the Argument and Rebuttal and 50-Word Summary be amended to conform to the updated fiscal impact analysis.

Standard of Review

The Attorney General has the task of preparing, in no more than 100 words, an impartial ballot title and summary for each initiative measure submitted to the voters. (*Yes on 25, Citizens for an On-Time Budget v. Superior Court* (2010) 189 Cal.App.4th 1445, 1451-1453.) The purpose of the ballot title and summary is to inform the voters of the character and purpose of the measure. (*Id.* at p.1452.)

The title and summary need not contain a summary or index of all of the measure's provisions; a statement of the major objectives or "chief purpose and points" of the measure is satisfactory. (*Brennan v. Bd. of Supervisors* (1981) 125 Cal.App.3d 87, 92.) However, the Attorney General's statement of the purpose of the measure must be true and impartial, and not misleading, argumentative, or likely to create prejudice for or against the measure. (*Brennan, supra*, 125 Cal.App.3d at p.93.) It must reasonably inform the voter of the character and real purpose of the proposed measure. (*Ibid.*)

In addition to the title and summary, the Attorney General also must provide a ballot label. (*Yes on 25, supra*, 189 Cal.App.4th at p.1452.) The ballot label must set forth, in no more than 75 words, a condensed version of the ballot title and summary prepared by the Attorney General and the financial impact summary prepared by the Legislative Analyst. (Cal. Elec. Code § 9051.)

Any elector may challenge the sufficiency of the Attorney General's ballot materials. (See Cal. Elec. Code §§ 9092, 13282, 13314; Cal. Gov. Code § 88006.) However, in ruling on such a challenge, the courts are required to afford substantial deference to the Attorney General's actions. As a general rule, the ballot materials prepared by the Attorney General are presumed accurate, and all legitimate presumptions must be indulged in favor of the Attorney General's actions. (*Lungren, supra*, at pp. 439-440.) If reasonable minds may differ as to the sufficiency of the ballot materials, the Attorney General's ballot materials

should be upheld. (*Ibid.*) A peremptory writ of mandate shall issue only upon "clear and convincing" proof that the Attorney General's ballot materials are false, misleading, or inconsistent with the requirements of the election laws. (*Id.* at p.439.)

Stipulation to Intervention

The parties have stipulated that Yes on 29 -- Californians for a Cure, Sponsored by the American Cancer Society California Division Inc., American Lung Association in California, American Heart Association and Cancer Research Doctors ("Intervenor"), a political committee formed to support Proposition 29, may intervene to oppose the petition to the extent it seeks to amend the ballot label. The Court shall approve the intervention by separate order.

Requests for Judicial Notice

The Court grants the requests for judicial notice filed by Petitioner and Intervenor.

Discussion

The Court rejects the suggestion that a ballot label must include a shorter version of every point included in the ballot title and summary.

The ballot label is intended to be a "condensed version" of the ballot title and summary. The purpose of the ballot title and summary is to inform voters of the character and purpose of the proposed measure. The purpose of the ballot label is no different. The intent is to give voters a more "condensed" statement of the character and purpose of the measure.

Because the ballot label is subject to a more restrictive word limit than the ballot title and summary, the Attorney General must exercise his or her discretion to determine how to further "condense" the statement of the chief purpose and point of the measure into even fewer words, while still providing a clear and impartial description of the proposed measure.

Since this can be a difficult task, the Attorney General is afforded considerable latitude in preparing the ballot label. (*Yes on 25, supra*, 189 Cal.App.4th at pp.1452-1453.) A petitioner challenging the Attorney General's ballot label must overcome the presumption that the ballot label is correct. If reasonable minds may differ as to its sufficiency, the ballot materials prepared by the Attorney General must be upheld. (*Id.* at p.1453.)

In exercising her discretion here, the Attorney General decided not to include a reference to the 9-member committee in the ballot label. The Attorney General's actions are presumed correct, and Petitioner has failed to overcome this presumption.

Petitioner's argument, in essence, is that because the ballot title and summary refers to the committee, it must be a chief purpose or point of the measure and, therefore, it must be included in the ballot label.

However, the fact that the title and summary refers to the committee does not necessarily mean it is a chief purpose or point of the measure. The title and summary is required to disclose the chief purpose and point of the measure, but it also may refer to other (subsidiary or auxiliary) provisions of the proposed measure.

Moreover, because the ballot label is subject to a more restrictive word limit, it follows that a ballot label's "condensed" summary of the purpose of a proposed measure may, of necessity, be more general, and less specific, than that of the title and summary.

Applying these principles to the case at hand, the Court is not persuaded that Petitioner has shown, by clear and convincing evidence, that the Attorney General's ballot label is inconsistent with the requirements of law. In the Court's view, the ballot label fairly, accurately, and impartially conveys the chief purpose of Proposition 29, which is that it imposes an additional tax on cigarettes to fund research for cancer and other tobacco-related diseases. Accordingly, the Court shall deny the First Cause of Action for a peremptory writ compelling Respondent to amend the ballot label.

The Second Cause of Action seeks a peremptory writ compelling Respondent to amend the Argument, Rebuttal and 50-Word Summary to conform to the updated Legislative Analyst's fiscal impact analysis. Because the Second Cause of Action is unopposed, and to avoid possible voter confusion about the fiscal impact of the measure, the Court shall grant the Second Cause of Action.

Disposition

The writ petition is granted in part, and denied in part. The Court grants the requested writ compelling Respondent to amend the Argument, Rebuttal and 50-Word Summary against Proposition 29 to conform to the updated Legislative Analyst's fiscal impact analysis, as follows:

- (a) To amend the Argument Against Proposition 29 to (i) replace "\$855 million" with "\$735 million" in the first bullet point; (ii) replace "\$16 million" with "\$15 million" in the fifth bullet point; (iii) replace "\$117 million" with "\$110 million" in the sixth bullet point; and (iv) replace "\$855 million" with "\$735 million" in the last paragraph;
- (b) To amend the Rebuttal to Argument in Favor of Proposition 29 to (v) replace "\$855 million" with "\$735 million" in the first bullet point; (vi)

- replace "\$133 million" with "\$125 million" in the fourth bullet point; and (vii) replace "\$855 million" with "\$735 million" in the last paragraph; and
- (c) To amend the 50-Word Ballot Measure Summary for the Argument to replace "\$855 million" with "\$735 million."

The Court denies the requested writ compelling Respondent to amend the ballot label.

In the event that this tentative ruling becomes the final ruling of the court, this minute order shall be effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice shall be required.

Date: _____, 2012

Timothy M. Frawley
Judge of the Superior Court of California
County of Sacramento